**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| **UNITED STATES** | § | |
| **VS.** | § | **CRIMINAL NO. 4:06-cr-421**<br>**CIVIL NO. 4:13-cv-604** |
| **ADNAN MIRZA** | § | |

# **Brief In Support Of Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody**

## ***Introduction***

Adnan Mirza was convicted of providing approximately $700 of currency to the Taliban and unlawfully possessing firearms and ammunition as an illegal alien. Mirza did not provide, nor did he ever intend to provide, currency to the Taliban. Mirza was lawfully in the United States on a student Visa. The government alleged that Mirza violated his student Visa by working. Although Mirza performed extensive volunteer work, he did not perform any work for pay, so he did not violate his student Visa. Although not relevant to the charges, the government alleged in trial that Mirza intended to travel to Afghanistan or Iraq to fight for the Taliban against Americans. Mirza never intended to travel to Afghanistan or Iraq to fight for the Taliban against the Americans.

Mirza engaged in discussions with his friends about the political situation in the Middle East. During these discussions, Mirza expressed disagreement with the policies of violence fostered by the United States and by the Taliban. Mirza believes that persons of all religions and cultures can live together in peace.

Mirza believes all persons have a duty to provide humanitarian relief to those in need including the homeless and less fortunate in their hometowns as well as refugees in countries around the world.

The government twisted Mirza's peaceful support for Islamic principles and for the hungry into something evil by using a paid government contract agent to manufacture criminal intent and by demonizing guns in contravention of the Second Amendment.

This case was created by a commanding invitation to Mirza from James Coates, the government's paid [1] confidential informant, to go camping and learn to shoot guns.[2] After the confidential informant convinced Mirza to camp and shoot guns, the confidential informant introduced a paid government contractor to encourage campers to play war games when shooting their guns. Trial defense counsel, David Adler, failed to overcome the government's manufactured case, because Adler failed to review all of the evidence provided by the government, failed to talk to Mirza about the facts of the case, and therefore failed to investigate defenses. As a result, Adler lacked knowledge of the timeline and lacked knowledge of the true events and true intent of his client.

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[1] Coates was paid for information. (DE 257 at p.202- 203) The amount of pay varies depending upon amount of time, a particular event, leg work, or whatever else. *Id.* An informant does logically get paid more if gives more information. *Id.* On one occasion, Coates' wife saw Coates bank account open on his computer. Coates had been acting very strange, so as a smart wife, she had decided to check the computer when Coates got up without logging off. She was shocked to see about weekly deposits in the amounts of $10,000 and $15,000 each. (Affidavit of Fatima Bhutan, DE 304-5 at p. 2) Prior to this time, Coates would frequently complain to his wife that he did not have enough money to buy a nice house and a fancy car. *Id.* Coates was clearly motivated to accept money to entrap his friends.

[2] "I heard Jim Coates talking to Adnan on the phone. In these interactions, Jim was very demanding and controlling. Jim had served in the military and this seems to have given him a commanding nature. Jim insisted that Adnan do everything that he did. He wanted Adnan to buy a motorcycle, gut fish and shoot guns. He would chastise Adman if Adnan did not want to do what Jim suggested. He would tell Adnan that Adnan was weak. He would insist that Adnan conform to how he wanted to do things." Affidavit of Fatimah Bhutan, wife of the confidential informant, (DE # 304-5 at pp. 1-2)

Undersigned counsel recognizes that this claim is being lodged against a defense attorney who is generally well respected by the judiciary having been appointed in many cases. According to pacer, Adler has been counsel in 566 cases. However, the volume of cases assigned to Adler is precisely the reason that he was unable to effectively represent Mirza in this case which involves many banker's boxes of documents, many hundreds of hours of audio taped conversations and many complex legal issues. For the most part, Adler effectively tackled the legal issues which left little time for the factual investigation.

***Statement of Facts***

The facts are - not one audio tape introduced into Mirza's trial has Mirza's voice (or any of the other campers) stated an intent to support the Taliban or to support any violent acts against Americans.

The facts are – the campers never intended to provide financial support to the Taliban.[3]

The facts are - the only evidence offered by the government to indicate anything other than an intent to provide humanitarian aid to the hungry was the conclusory

[3] "Noone talked about giving any money to the Taliban." (Affidavit Of Hany Massoud, DE # 304-2 at p.2)
"I have seen and talked to Adnan frequently, all his life. I know that Adnan had no intent to ever fight on a battlefield or ever support people fighting on a battlefield." (Affidavit of Shiraz Qazi, DE # 304-3 at p.2)
"I understand that the government claimed Adnan received money from several government agents. I understand that those government agents accused Adnan of giving the money to Ayub Badat for support of the Taliban. Ayub Badat is my father. My father has never in the past nor would he ever in the future support the Taliban. My father would have received the money in his position with ICNA. If the donors had specifically requested that the funds support services internationally, then my father would have ensured that the funds were delivered to an ICN volunteer involved with the international social services division of ICNA (Helping Hand for Relief and Development) for support of a just cause." (Affidavit of Abdure Rehman Badat, DE 304-4)

undocumented statements of the paid government contract agent that the campers intended to support the Taliban and fight American forces.

The facts are – the audio tapes document the campers' true intentions:

1. The campers intended to provide money to a hospital in Pakistan where refugees from the Waziristan refugee camps are treated. (Exhibit 15a and 16a)[4]
2. The campers intended to hook up with and support Jamaat-e-Islamia Pakistan. (Exhibit 23a at p. 82) [5]

**Organizations and Religions**

Jamaat-e-Islamia Pakistan is a socio/political organization in Pakiston which "hopes to awaken the slumbering people and organize them through training to focus on seeking characteristics in line with the teachings of the Islamic faith." (Exhibit A, Excerpts from website for Jamaat-e-Islamia Pakistan) Jamaat-e-Islamia Pakistan is committed to turn Pakistan into a state:

1. Which should be replica of the Khalafat-e-Rashid.[6]
2. Which should guarantee the basics needs like food, clothing, housing, free Health and education facilities along with easy access to justice.
3. Which ensures fair distribution of resources.
4. Where all human fundamental rights are safeguarded.

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[4] Exhibits are not available in the online record; therefore, they are being attached to this pleading for the Court's review. The exhibits will be identified by the same number as they identified in trial to avoid confusion in presentation of the argument. In Exhibit 16a, Coates confirms the campers are talking about sending money to Arab refugee families in Waziristan.
Massoud remembers some discussion about sending money to a hospital. (DE # 304-2 at p. 2).

[5] In Exhibit 23a, Kobie Williams asks Mirza if the campers travel overseas to Pakistan will they be able to hook up with Jamaat Islamia. Mirza replies, "yes."

[6] Khalafat-e-Rashid is a governing system blessed by God which guarantees for peace, security and spiritual advancement. Khalafat-e-Rashid, The Review of Religions, September 2008.

5. Where people can vote in and out Governments through election. *Id*

Members of Jamaat-e-Islamia Pakistan founded Islamic Circle of North America (ICNA). "ICNA has worked to establish connections between Islam and the public….ICNA also works closely with many national interfaith organizations for the betterment of society. By focusing on self-development, education, outreach and social services, ICNA has cemented its place as a leading grassroots organization in the American Muslim community… ICNA Relief is a multicultural human development and community building organization. The purpose of the organization is to address the basic human and social service needs of the underserved communities with in the United States." (Exhibit B, Excerpts from website for ICNA.) ICNA Relief services include community development, case management, domestic disaster relief, family counseling, foster parent training, hunger prevention, funeral services, and a shelter home. (Affidavit of Abdur Rehman Badat, DE 304-4 at p. 1). Abdure Rehman Badat's father, Ayub Badat was the Executive Director for many years. *Id.* At the time of Adnan's work with ICNA, ICNA provided international humanitarian relief under the name of ICNA. Recently, the International humanitarian relief project was split from ICNA and given the name Helping Hands. Helping Hands can be accessed through ICNA or independently.

Neither ICNA nor Jamaat-e-Islamia Pakistan nor Helping Hands is associated with the Taliban. Neither ICNA nor Jamaat-e-Islamia Pakiston nor Helping Hands is listed as a specially designated terrorist organization. The principles upon which these organizations are founded are non-violent and compassionate.

Through his humanitarian service, Adnan grew in his spiritual strength by following the Pillars of Islam. The Pillars of Islam must be followed in order to grow in the deen. This concept is often mentioned on the audio tapes in this case. The Deen is the path along which righteous Muslims travel in order to comply with divine law. This concept does not include fighting Americans, and Adnan never intended to fight Americans. The belief that Islam supports violent offensive war is a misconception created by some extremists to defend their conduct. Religious extremists have used isolated language in their spiritual teachings support violence throughout history. The violence of a few extremists has fed the fears of many Americans including government officials. Islam is a peaceful religion that co-existed in Pallestine peacefully with Christians and Jews for many years until the Nazi Holocaust instilled fear of all non-Jewish persons into the hearts of Jews. Islam is in fact a peaceful humanitarian religion.

The Pillars of Islam includes:

1. Shahadah: declaring there is no god except God, and Muhammad is God's Messenger
2. Salat: ritual prayer five times a day
3. Sawm: fasting and self-control during the blessed month of Ramadan
4. Zakat: giving 2.5% of one's savings to the poor and needy
5. Hajj: pilgrimage to Mecca at least one in a lifetime if he/she is able to do. (Exhibit C *Pillars of Islam*, Wikapedia Online Encyclopedia)

During Ramadan, Muslims are also expected to put more effort into following the teachings of Islam by refraining from violence, anger, envy, greed, lust, profane language, gossip and to try to get along with fellow Muslims better. *Id.* Islam teaches peace and compassion. Zakat can be performed with acts of service if a person is not wealthy. *Id.* Adnan more than made up for his lack of wealth to give with his extensive acts of service.

**Mirza's Life**

Mirza was born in Kuwait in 1977. (Affidavit of Adnan Mirza, D.E. #304-8 at p. 1) He is a Pakistani citizen but he was raised mostly in Kuwait. [he] was even exposed to American television. As a result, [he has]a greater acceptance of diversity, encourages peace and understanding of all culture "Kuwait is unique in the Middle East, there you find a blending of different Arab cultures living in the same country. [Mirza's] friends were from all of these different cultures and [he] was even exposed to American television. As a result, [he has] a greater acceptance of diversity, encourages peace and understanding of all cultures, and strives to help others reach this understanding." *Id.* Mirza's father worked for Bechtel oil when Mirza was young. Mirza's dad left Bechtel oil to work for the Ministry of Interior which is the equivalent of the United States Department of Homeland Security.

Mirza was in the 9th grade when the Iraqis invaded Kuwait in the first Gulf War. Mirza heard the bombs blast. Mirza's dad was in grave danger, because the Iraqis targeted government employees. "The Iraqis cut off all communications. They disconnected the phone lines and shut down access to television." *Id* at p. 2. Mirza and his entire family caravanned to Pakistan to escape. Mirza's father returned as soon as the United States removed the Iraqis. Nothing in this background suggests any support for violence against the United States, quite the opposite.

Mirza's father passed away when Mirza was 18 years old at the age of 52. As the eldest male in the house, it fell upon Mirza to support the family. Three years later, after Mirza secured his dad's death gratuity for his family, Mirza left Kuwait to study. He went first to Cyprus and then to the United States. *Id.*

Mirza arrived in the United States to study shortly before September 11, 2001. After the attack on the twin towers, Mirza was dismayed by the tragedy and then saddened by the misinformation in the media coverage. Mirza decided that he had a duty to do everything possible to dissipate that fear by showing Americans the true nature of Muslims as peaceful, compassionate contributors to worldwide humanity. *Id.* To fulfill this duty, Mirza volunteered for every possible outreach project, through his mosque, through ISGH (Islamic Society of Greater Houston) and through ICNA. Mirza fed the homeless on the streets of Houston; he collected donations of halal meat and gave it to needy families; he answered the *WhyIslam* hotline[7]; he participated in a talk show educating the public about Islamic concepts; and he ran the technology for religious sensitivity training for the Houston Police Department. [8] Mirza's volunteer work was directed to all hungry persons in need, whether, Christian, Muslim, Jew or atheist. "I told the others that feeding was about satisfying hunger. There should never be any strings attached to hunger." (Affidavit of Mirza, DE 304-8 at p.

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[7] This is a nationwide hotline number established by ICNA for Americans to call with any questions they might have about Islam. Adnan answered for our region.

[8] The training program for HPD was developed by Coates, his wife Fatimah Bhutan and Mirza. It was a day long program and they did it once per month for two years. (Affidavit of Fatimah Bhutan, DE # 304-5)

4). Mirza embodied the Islamic principle that you should give to the needy for the sake of the needy. (Affidavit of Bhutan, DE 304-5)

Mirza also accepted the responsibility of Treasurer for ICNA. In the position of Treasurer, Mirza managed the finances of ICNA including accepting all donations and paying all expenses. Id. Also on his own, community members would turn to Mirza and ask who was in need. Mirza would tell them which families had a need, accept donations for those families and either deliver the money the family or purchase food for the family and deliver the food. Some people wanted more direct knowledge of where their funds were going. Id. Mirza served on the committee for Zakat with ISGH. ISGH would receive donations from members for the needy. The Zakat committee has the responsibility for those funds. Mirza would interview the needy and approve issuing checks. *Id* at p. 3.

As part of Mirza's volunteer work, Mirza collected money from his camping friends to send to refugee families overseas. Also, as Treasurer of ICNA, Mirza intended to work through his ICNA contacts to provide money to support refugee families in need as identified by ICNA's parent organization Jamaat-e-Islamia Pakistan. Hanif Ismail is Mirza's point of contact through ICNA to Jamaat-e-Islamia Pakistan. Mirza gave the money collected from the campers to Hanif Ismail. (Affidavit of Hanif Ismail, DE. # 304-6) Mirza "never asked that the money be used to support the Taliban or al Qaeda. *Id.* Mirza "never suggested to [Hanif Ismail] any interest in funding violent groups overseas… He never said anything to me that was anti-American, nor anything supportive of the Taliban or alQaeda… His focus was on helping refugees, widows, orphans, and the homeless, not on committing or supporting violence." *Id.* Adnan hung out in the office of his sponsor Ibrahim Badat.

Ibrahim Badat would allow Mirza to use his computers for Mirza's volunteer work and his school work. (Affidavit of Ibrahim Badat, D.E. # 304-1 at p. 1). Ibrahim Badat would see Mirza almost every day. Mirza never talked about funding violent groups overseas, nor did Mr. Badat ever hear Mirza on the phone or in person talking to anyone else about funding violent groups overseas. *Id.*

Mirza loved to camp. "I loved being outside, being close to fresh water, and trees, lots of lush green environment." (Affidavit of Mirza, D.E. # 304-8 at p. 4) (Affidavit of Qazi, DE #304-3). Coates insisted that Mirza should go camping with him and learn to shoot guns. These conversations were overheard by Coates' wife, Fatimah Buhtan (DE # 304-5) Coates hounded Mirza about shooting, calling several times a day. (DE # 304-8 at p. 5) After a great deal of pressure Mirza decided to try shooting, but he never intended to shoot anything other than clay pigeons, and maybe a deer. *Id.* To make sure that he did not do anything to violate my student visa, he took a gun safety course, and obtained a hunting license. *Id* at p. 8. Then, he went for the adventure. The rest of the story is recorded on tape. The tapes show young men doing what young men do in Texas – shooting guns, talking politics and talking women.

Hany Massoud went camping and fired weapons on one occasion. (Affidavit of Hany Massoud, DE 304-2 at p. 1). Massoud is a producer for the news program, Democracy Now in New York City. At the time of these events, the show was produced in Houston. When the FBI arrested Massoud's friends, he returned their call. Massound confronted the FBI, telling the agents that if they had "spent more energy into making sure that these people were planning to do something, they would have learned that they were not trying to do anything at all." Id. While camping, "we joked around a lot." *Id.* Like any culture, when boys gather they talk about the world "including that brothers and sisters are being killed in war. Some of the deaths are of people engaged in the war; some of the deaths are people who were caught in the crossfire. We had discussions about what is a freedom fighter, discussion of what is wrong and what is right. We discussed the people that were the victims of unjust war and how to alleviate suffering. Never did Mirza ever state an interest in supporting any war or any participants in war, and there was never a discussion to actually do anything or planning to actually do anything, not on the camping trip and not at any other time that we were together." *Id.* Massoud describes the gun activity as no different than a martial arts class. Id at p. 2.

> It was not a big deal. The gun culture today expects people to know how to use guns and to do these sorts of things. It was like training to defense yourself in the future if you had to…The whole thing was a fun thing. It didn't seem like we were violating any laws. It was just a group of guys hanging out. If it had been an average group of white Americans, no one would think anything of it. It was just legitimate target practice. *Id.*

Massoud performed volunteer work with the campers. Massoud was never charged with a crime. Massoud called Mirza's trial lawyer, David Adler, and tried to give him facts. Adler was not interested. Massoud also knows Ibrahim and Hanif Badat very well. It is Massound's opinion that they are both very honest and would not mislead anyone about Mirza. *Id.*

Mirza never worked for pay in the United States. The government identified different employers during different times in the trial to match the information the government wanted to offer. When the government contract agent was testifying, he claimed Mirza worked for Ayub Badat. This is correct in the sense that Ayub Badat was the Executive Director of ICNA, so Ayub Badat is the one who assigned Mirza his volunteer work which is the work he would refer to when talking to his friends and the government. (DE 304-8 at p. 8) However, Mirza was not paid for any of his volunteer work, and the government does not claim Mirza was paid for the volunteer work. Then at other times, the government accused Mirza of working for Ibrahim Badat. Ibrahim Badat was Mirza's sponsor and owned the business where Mirza would hang out doing his homework and volunteer work. Mirza was not employed by Badat. (Affidavit of Ibrahim Badat, D.E. #304-1 at p. 1) Badat was required to provide financial support for Mirza, because he was Mirza's sponsor. Ibrahim Badat's brother, Hanif Badat, occasionally donated his salary to Mirza for his support. *Id.* Shiraz Qazi is Mirza's cousin. Qazi's parents immigrated in 2003 and opened a business next door to Ibrahim Badat. Qazi hung out at his parents' office. (Affidavit of Qazi, DE 304-3 at p. 1) Qazi affirms that Mirza was not working and Qazi was right there in a position to see Mirza. *Id.* Mirza considered Coates' wife, Fatimah Bhutan as a mother figure for him in the United States. (Affidavit of Fatimah Bhutan, DE 304-5) Mirza consulted Bhutan for personal advice. If Mirza had worked, he would Id have talked about his work and Bhutan would have seen him working. *Id.* This never happened. *Id.*

**Campers Meet and Investigation Starts**

Adnan met Kobie Williams and James Coates in 2001 or 2002 through their volunteer service with ICNA. (DE 257 at p. 186). James Coates and Kobie Williams were stopped by Border Patrol agents at Big Bend National Park in July 2004 while possessing weapons. (DE 312 at p. 4). Around September/October 2004, Coates agrees to work for the FBI. (DE 304-8 at p. 5) In 2004, Agent John McKinley was assigned to this case. (DE 257 at p. 159) In December 2004, after Coates becomes a confidential informant, Adnan gets his hunting license. (DE 257 p.5).

**The Government's Case vs. The Actual Evidence**

The government asserts in its brief that "Authorities learned in 2004 that Mirza was part of a group in the United States discussing travel to Afghanistan or Iraq to fight on the side of the Taliban against American forces (*United States Response to Adnan Mirza's 28 U.S.C. § 2255 Motion*, DE #312 at p. 4) The government cites portions of the transcript in support of this claim: (DE #257, at pp. 160, 184-86; DE #258, at pp. 271, 282-283,303,312) These citations merely document the government agents' manufactured intent. Not one record citation provides evidence of criminal intent that is actually documented in writing or by the many hundreds of hours of audio tape.

The citations to pages DE 257 pages 160 and 184-186 are from the testimony of the lead case agent, John McKinley, who was never present for any camping trips or meetings among the campers. Agent McKinley describes the results of a voluntary interview of Mirza that is not documented in writing or by audio tape. Even in the government agent's summary of the undocumented interview, the government agent does not say that Mirza intended to provide currency to the Taliban. Agent McKinley, who was never present for a single meeting or camping trip, also gives his conclusory statement that "the individuals in the box there went up to a campground site they had access to in Willis, Texas ... And engaged in, among other activities, firearms training to prepare them to go overseas in support of their stated goal, to go to Afghanistan. (DE 257 at p. 164)

The remaining citations derive from the testimony of Malik Mohammad, the paid government contract agent, a very curious creature who is neither a civilian confidential informant, nor a salaried government employee. He appears to be a mercenary hired on contract for the particular purpose of prosecuting Muslims. This contract agent's testimony is replete with his undocumented statement that the campers intended to support the Taliban and fight against Americans. This intent is not documented in any of the many hundreds of hours of audio tape. This intent is manufactured by the government contract agent. The constant repetition of the agent's manufactured intent without any defense counter attack certainly critically impacted the jury's understanding of the facts. The government very effectively used the technique of repetition, repetition, repetition. What they repeated over and over was the government agent's interpretation of conversations, not the recorded statements of Mirza's true intent.

The actual evidence does not support the government's manufactured intent. According to the audio tape, the campers intended to support refugees through Jamaat-e-Islamia Pakistan. (Exhibit 23a at p. 82.) The contract government agent occasionally inserted comments on tape that would reflect a criminal intent in an effort to secure agreement from his targets. He failed in this effort. Mirza never agrees with any of the statements. For example, Kobie Williams says that a lot of people say it is haram to support revolution and overthrow governments. (Exhibit 23a at p. 91) Of course, this statement by Kobie Williams destroys the government's case and would end the paid contract agent's contract, so in an effort to move the campers towards revolution, the government agent responds "lot of people nowadays don't," meaning that people believe it is OK to support revolution and overthrow governments.

Not one audiotape introduced in trial has Mirza saying he supports any violent acts whatsoever. The government has to use agents manufacturing intent to create its case. The physical evidence contradicts the summary of agents. Mirza was actually involved in a cable television program, and there is no information to indicate that the program expressed extremist views. (DE 257 at p. 219). There is no surveillance of Mirza "working." *Id* at 227. Nobody from the government subpoenaed any records from Stop-n-Save. *Id* at 228.

Agent McKinley admitted on cross that U.S. Government supported the Northern Alliance Mujahadeen by providing weapons and funding. (DE 257 at p. 233). Malik Mohammad gave money to Adnan which he marked as a "donation." The money order did not say the cause to which the donation was to be applied.

The government uses the speculation from government witnesses in order to impart terroristic intent upon Mirza. For example, Mirza states on a tape "We don't want these – like the ISGH people to know that's what we are doing with their property." (DE 258 at p. 13, referring to transcript of Exhibit 13(a)) The government witness is then permitted to state that in his opinion "it would scare them." (DE 258 at p. 14) The implication of this testimony was that the fear would be related to what the witness considered military training.

In reality, the discussion was just about shooting. Exhibit 13(a) starts with Kobie saying pictures of us with guns might scare them. It ends with James saying everyone knows the camp is used for shooting. The more likely reason for concern about photos of guns is the imposition on ISGH of the risk of liability for serious injuries. Noone should be shooting on someone else's property without permission, because someone could get injured and ISGH could be sued.

The next tape the government plays is Exhibit 13b. The government plays this tape because it mentions "Shaheed." The witness describes "Shaheed" as the blessings that you would get if you lived a proper Muslim life and went out as a martyr, died as a martyr." (DE 258 at p. 220). The defense did not attempt to explain the discussion. This discussion is actually part of a continued harassment of Mirza to get married. The blessings that one receives is 72 virgins. Mirza is saying he will wait for the virgins. Coates says but you have to be married in order to receive that honor. Defense counsel did not know that the meaning of this conversation was to harass Mirza because he had not spoken to Mirza about the facts of the case. A copy of the transcript offered as exhibit 13b is attached as an exhibit to this Memorandum of Authorities. The government also presented this exhibit to support its position that the group was financially supporting the Taliban. There is no mention in Exhibit 13b of the Taliban. These conversations were surreptitiously recorded in the secluded woods. There is no reason that anyone who was present would sanitize their conversation. If there had been a discussion about the Taliban, it would be on tape. Contrary to the government's intent, Mirza's intent was to support victims of government violence held in the hospital. Defense counsel did not know this was the real intent because he did not talk to Mirza about the facts prior to trial. Mirza explains this discussion in his affidavit.

The government agent again states the conclusion, "It was a training camp. We were training for the eventuality that we wanted to go overseas." (DE 258 at p. 25)

In addition to the speculation of the agent about plans, the government highlights the use of human silhouettes for targets. (DE 258 at p. 26 and 78) Attached to this memorandum as Exhibit D are human silhouette targets that are available for purchase online. Some of the targets are photographs of real humans. It is not a reasonable inference that the use of human silhouette targets means the gun enthusiasts in this case plan to shoot Americans.

The government witness also testified that he instructed the boys that he was teaching tactics that a first year law enforcement person or a military person would learn. (DE 258 at p. 28) No tapes of instructions to the boys were offered to support this statement.

In the next tape played, the boys are talking about donations. The government highlights Mirza's statement that he can get money into the country, but a few lines down from that statement you learn that he is talking about giving money to the needy in his home country of Pakistan which would not be a violation of any U.S. laws. (DE #258 at p. 32) See transcript of Exhibit 15a attached to this memorandum.The boys do discuss a great needs in Iraq and Afghanistan later in the conversation, but Mirza makes it clear that he has no contacts in either Iraq or Afghanistan. (DE # 258 at p. 33) Again, there is no mention of the Taliban.

Next the government offers Exhibit 16a. (DE # 258 at p. 34) From this the government highlights that Mirza said it is too hard to get money to Afghanistan but that there are families in Pakistan in need of assistance. (DE #258 at pp. 34-36) The government also highlights that Mirza wants to send the money to a doctor who owns a hospital. (DE #258 at pp. 36-37) In this regard, the government agent claims that the doctor is associated with the battlefield. (DE #258 at p. 37) No place on the tape does it say this. The government agent just makes this up to match his story. Exhibit 16a is attached to this memorandum. In the exhibit, CW (Coates) confirms they are talking about Arab families in Waziristan. The government agent then interprets this conversation to mean that they are talking about funds to the battlefield and that sending money to families in Pakistan is an alternate means. The defense did not offer any evidence to contradict this repeated statement of intent. For example, the defense is aware that Mirza is connected to ICNA. ICNA provides international humanitarian relief to refugees and others suffering in humanity. The defense could have offered evidence that Mirza's statement recommending support of families in Pakistan was regarding support through ICNA for humanitarian aid for refugee families in Pakistan. This was in fact Mirza's intent as stated in his affidavit. The defense did not offer any evidence of the families suffering in Waziristan to show the alternative and actually true meaning of this conversation. A copy of an article from 2005 about the refugee camps in Waziristan is attached as Exhibit G. Where was the defense attorney who should have been sharing the true meaning of the conversations? Muslim boys following the edicts of their religion to support and care for the needy.

The government offers Exhibit 18 and 18a. (DE # 258 at p. 44). The government offers this just to point out that Mirza has 700 to send and will do so when he is able to. Exhibit 18a is attached to this memorandum. The government neglects to point out the discussion about medical supplies and clothes. Mirza says they do not need supplies right now but possibly they will need supplies 15 days before the funds are shipped.

The government offers Exhibit 19 and 19a. (DE #258 at p. 45). This exhibit mentions only the mujahedeen, not a prohibited recipient of support. A copy of Exhibit 19a is attached to this memorandum.

The government offers Exhibit 20 (DE #258 at p. 50) In this audio, the boys are about to run around and shoot at targets in the deer blinds. The prosecutor lays the framework to make it seem as though it is a serious military operation. He asks the government agent witness, "So were you guys just cutting up out there and playing or were – was this something serious?" The witness answers in the most telling statement of the trial, "I think it's demonstrated quite well in this that I was on the guys about being safe and taking it serious…. So I wasn't going to allow any cutting up." It is not the boys that are creating a serious project; it is the government, setting a trap to make it appear that these boys are malicious terrorists. Reviewing Exhibit 20a, Mirza was definitely cutting up. The government agent asks the one boy where are we; the boy says Chechnya. Then, he asks Mirza where we are going, Mirza say Bosnia. Everyone laughs. A copy of Exhibit 20a is attached to this memorandum.

The government offers Exhibit 21 and 21a. (DE # 258 at p. 52). In this call, Mirza talks to the government agent about rifles. Exhibit 21a is attached to this memorandum. Mirza was seeking to purchase and M6 which is a hunting rifle, not a military weapon.

The government offers Exhibit 22 and 22a. (DE #258 at p. 53). With this exhibit, the government claims that Mirza is purchasing a gun to use in trips overseas. (DE #258 at pp. 52-53). This is actually absurd. The government witness's statement is the only evidence offered on this purpose. The defense does not offer contradicting evidence of intent. Mirza could not travel with a gun overseas. In a prior conversation, the boys even discussed the purchase of guns overseas if they did in fact ever travel overseas. This is proof that the government agent is imposing the intent. Clearly Mirza is talking about the trips camping in Texas, where you can drive with a gun to hunt and engage in target practice. If the government is imposing the intent here, it follows that he likely imposed the intent elsewhere.

The government offers Exhibit 23 and 23a. (DE #258 at p. 56). Pages from Exhibit 23a are attached to this memorandum.[9] The conversation discusses travel. The government agent says Iran. Mirza advocates for Pakistan because the money is going to go to a hospital in Pakistan. (DE #258 at p. 59). Mirza also says that the reason not to go to Iran is that Iran is anti- American. Exhibit 23a at p. 77. The government agent claims they plan was to go from one country into Afghanistan in order to support the Taliban and the Mujahadeen. (DE # 258 at p. 58). The government agent then says we were going to fight against the U.S. forces. (DE # 258 at p. 60, 63). The government agent misquotes a sentence from Mirza, "I need to do jihad when it's badly needed." (DE # 258 at p. 60). The sentence actually is part of a political/spiritual discussion in which Kobie says that he has been advised that it is haram to revolt against governments. The confidential informant and Kobie chat a bit, and then Mirza interjects, "When they can't follo… I mean do jihad when it's badly needed." Exhibit 23a at p. 91. The difference in the government agent's misquote and the actual statement alone could have impacted the jury sufficiently to vote not guilty. A political discussion is protected by free speech and doesn't reflect anything but a person's thoughts on an issue. The government agent turned it in to an expression of intent, and the only expression of intent that he attributed to a particular transcript statement. The government agent even expands to say that Mirza's statement (his misquoted version) meant Mirza felt there were certain things they were obligated to do and that jihad was one of them. (DE # 258 at p. 61) In truth, Mirza was responding to Kobie's general proposition about jihad. Mirza was clearly by the true words not talking about them doing anything, but that in general jihad should only be done if it is badly needed. In the Muslim religion the only jihad that is supported is defensive jihad which is the same as our self-defense and defense of others concepts. The government agent again gives the conclusion that Mirza is purchasing a gun to oppose the American forces despite the fact that no where in any discussion does Mirza state that he plans to oppose American forces.

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[9] This exhibit is particularly long, so only the relevant pages are attached to this memorandum.

The defense did not highlight other portions even of the conversations that were offered by the government. The government agent repeatedly states that they plan to hook up with forces and fight against the Americans. On page 82 of Exhibit 23a, Kobie asks if they travel overseas will they be able to hook up with Jamaat Islamia. Mirza says yes. Here then is the direct evidence of their intent. Wikepedia report on Jamaat Islamia Pakistan is attached as Exhibit A, Jamaat Islamia is a social and political party, not a terrorist group. In their history, they have provided relief to refugees as this group discussed serving refugees in Wajiristan. The Jamaat has unions for doctors, teachers, lawyers, farmers, workers, women, and students. This conversation never says that they are then headed to Afghanistan. The Jamaat Islamia is focused on creating a Pakistan that guarantees the basic needs like food, clothing, housing, fee Health and educaiton facilities along with easy access to justice; which ensure fair distribution of resources; where all human fundamental rights are safeguarded; where people can vote in and out Governments through election. See Exhibit A. ICNA was started by members of Jamaat-e-Islami in Pakistan. Both are socio-political groups focused on education, peace and humanitarian aid. Hanif Ismail is an ICNA member who frequently traveled to Pakistan and was involved directly with taking care of widows and orphans who had no bread earning male member in the family. Hanif Ismail provided an affidavit indicating that he received the money from Mirza and that Mirza's intent was that the money support humanitarian needs. It was in fact used as Mirza intended it to be used but it was used in Houston instead of Pakistan. (Affidavit of Hanif Ismail, DE #304-6)

The other boys do talk about going on to Afghanistan, but Mirza tries to talk them out of it. He repeatedly tells them how hard it would be to cross the border. The government agent contradicts him and pressures them to agree to cross the border. There is never any final agreement from Mirza. Mirza just stops participating in the conversation. Exhibit 23a (whatever we end up calling 23a) Then, goes home and tells his cousin Shiraz about their crazy plan. (Affidavit of Shiraz Qazi, DE #304-3) The government agent says they talked about pretending they were going to get a wife from Pakistan. It was the government agent that said this, "UCE .. I'm trying to get me a wife to take back… I'm saying for a reason…I'm saying as an excuse." The others respond that they would really like to pick a wife, but the government agent keeps repeating that getting a wife should be used as an excuse. Exhibit 23a to this brief at p. 133-134.

The government offers Exhibit 25 and 25a. (DE # 258 at p. 80) The government agent says that this tape is a discussion of moving money to support the Mujahadeen and Taliban in Afghanistan. (DE # 258 at p. 81) However nowhere in this discussion does it state they are sending money to the mujahedeen or the Taliban. Exhibit 25a is attached.

The government offers Exhibit 26b. (DE #258 at p. 83) The government agent says this is about getting money to the people who are fighting. Id. Nowhere in this tape does it say they are trying to get money to people who are fighting. It does however have Mirza's explanation of what he did with the money. Ayub had just returned from relief which would be some ICNA humanitarian relief effort. Hanif was present and said he took the money. Exhibit 26b at pp. 76-77 This testimony matches Hanif's affidavit which says that he received the money. Hanif says there was no intent expressed to him to use the money for people fighting. The only evidence of someone supporting fighting is the government agent who wants the boys to send money to support fighting. None of the tapes say the money is to go to fighting. Mirza says it was not to go to fighting. The witness who received the money says he was not told to put it towards helping those who are fighting.

The government offers Exhibit 28 and 28a. (DE # 258 at p. 86). The government agent claims this conversation describes the intent of the jamaat to fight American soldiers.

The government agent is the only one who says they will be fighting American soldiers. Exhibit 28a is attached to this brief. The entire conversation is joking about women.

The government offers Exhibit 34 and 34a. (DE #258 at p. 94) The government agent alleges this conversation is about fear of law enforcement catching them as though they are doing something wrong. Id. Exhibit 34a is attached to this brief. The conversation discusses the fear of profiling because they are Muslims firing guns. Something had occurred in Canada where some folks had ammonium. Mirza is shocked to learn of the Canadian's conduct. Kobie points out that they are not hiding anything; they are in the public and everyone knows they are camping. Id. Mirza's comments about profiling and Kobie's comments about openly camping are quite the opposite of the expression of guilty intent suggested by the government agent. In the Canadian event, the Canadians were training to overthrow their government, planned targeted attacks, and purchased ammonium for their bombs.

After introducing some the above tapes and a few others with very little information, the government

The government also charged Adnan with unlawful possession of a firearm and ammunition by an illegal alien. A student on a valid Visa is permitted to possess a weapon. In order to prove this charge, the government had to prove that Adnan had violated his visa and then retroactively revoke that visa with no hearing. Adnan was not working. He performed a significant amount of volunteer work through ICNA and ISGH. ICNA leaders permitted Adnan to use their offices for the volunteer work. ICNA leaders also provided Adnan financial sponsorship. Hanif Badat would give Adnan his pay check in the family business as financial support. .? None of this evidence was offered by Adler. The only evidence offered by the government that Adnan was working were the checks to Hanif and Adnan's alleged unrecorded, unwritten statement that he was working. This statement was allegedly made to Agent Jessica Gilbeau. (DE 259 at p. 20 and DE 259 at p. 44, no recording) Volunteer service with no compensation does not count as work. DE 259 at p. 54-55)

Adnan's sponsor is Ibrahim Badat. (DE 259 at p. 53) Ibrahim Badat signed the checks to Hanif Badat which Hanif then gave to Adnan for his financial support. .?? Find checks in evidence with evidence number) A visa holder must have a sponsor. The sponsor form says, "I'm going to make sure this student doesn't become a burden to the American taxpayers." (DE 259 at p. 49) Agent Gilbeau never interviewed Ibrahim Badat to determine how he supported Adnan. Id.

At the time if his arrest in 2006, Adnan had been in the United States since 2001 without ever leaving the country.

The government manufactured a story using quips from conversations and a government agent interjecting a malicious intent with no foundation for that malicious intent. Defense counsel did nothing to contradict the assertion of malicious intent because he never talked to his client about the facts.

## Statement of Law

### I. Adnan Mirza was denied the Constitutional right to effective assistance of counsel at trial by trial defense counsel, David Adler.

> "On each occasion, I would attempt to tell him my side of the story. He [my attorney] would interrupt me and tell me that he had not finished reviewing the documents and that when he had finished reviewing the documents, he would ask questions. This date never came." (Affidavit of Adnan Mirza, 304-8 at p. 7)

No trial strategy supports never speaking to the client about the facts of the case. The defense attorney must talk to the defendant about the charges, the evidence to be offered by the government, any potential defenses, and any evidence in support of those defenses. In this case, counsel refused to talk to the client about these matters. Counsel did not know what really happened and did not know who he needed to talk to in order to prove what happened. It does not matter how many times that you spoke to a client if you never review the facts of the case and listen to the client describe what happened.

Even the government recognized that defense was not effective in failing to subpoena the signator of the checks the government claimed supported its indictment. One simple phone call and the attorney would have known that Adnan was not employed by Ibrahim Badat. In addition, Adler could have subpoenaed Ibrahim Badat's business records such employee records and checking account records or interview other employees of the company for the testimony. Adler's statement conflicts with Badat's statement. Badat states in his affidavit that he would have testified if he had been contacted by defense counsel. Mr. Adler states that an attorney advised him that Mr. Badat would not testify. This conflict is irrelevant since Adler could have sought other evidence to besides testimony of Ibrahim Badat to address this issue.

It is also very important to point out that political discussions about who is right and who is wrong in a war are protected speech under the first amendment. Expressing a desire to investigate who is right and who is wrong is also protected speech under the first amendment. Even speculating that it is the Americans who are in the wrong is protected speech under the first amendment. The country was founded to ensure these freedoms. We teach our children to study history and current events, explore their views and the views of others. We should not incarcerate young men for doing what we teach them to do. Adler never reminded the Court or the jury about our rights under the First Amendment to engage is such discourse.

## The Strickland Test

Ineffective counsel violates a defendant's 6th amendment right to counsel. The Supreme Court has set out a two prong test for proving ineffective assistance of counsel: 1) the counsel's representation fell below the standard of objective reasonableness and 2) there is a *reasonable probability*, that, had counsel acted objectively reasonably, the outcome of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 688, (1984).

**Adler's Counsel was not Objectively Reasonable and was Prejudicial to Mirza's Case**

The defendant has the burden of proving specific acts or omissions of counsel that are not professional conduct in order to overcome the presumption that the trial attorney's conduct falls within range of reasonable professional assistance. *Id.* at 690. In determining whether counsel's conduct was reasonable, one must assess if counsel satisfied his duty to make *reasonable* investigations or to decline an investigation based on a *reasonable decision*. *Id.* at 691. Furthermore, the reasonableness of such investigations and decisions are substantially influenced by the defendant's disclosure of certain facts to counsel. *Id.*

The 5th Circuit in *Gaines v. Hopper* promulgated the rule that "informed evaluation of potential defenses to criminal charges and meaningful discussion with one's client of the realities of his case are the cornerstones of effective assistance of counsel. 575 F.2d 1147, 1150 (5th Cir. 1978). Therefore, counsel has a "duty to interview potential witnesses and make an independent examination of the facts, circumstances, pleadings and law involved. *Washington v. Watkins*, 655 F.2d 1346, 1355 (5th Cir. 1981). The 5th Circuit elaborated on the standard in *Bryant v. Scott* in which they stated that *at a minimum* counsel must interview potential witnesses and make independent investigation of relevant facts and circumstances. 28 F.3d 1411, 1415 (5th Cir. 1994). In addition, the more substantial the witnesses left uninvestigated, the more strongly the probability of ineffective counsel weighs. *See Id.* (referencing the proposition that an attorney's failure to investigate a crucial witness may constitute inadequate performance to support the holding that not interviewing eyewitness may strongly support a claim of ineffective assistance of counsel). Lastly, as an example of what conduct the 5th Circuit might find as insufficient investigation, the 5th Circuit in *Bower v. Quarterman* referenced "an attorney who completely failed to investigate the defendant's alibi and failed to interview potential witnesses" as conduct triggering such ineffective counsel in other circuits. *See* 497 F.3d 459, 468 (5th Cir. 2007) (by comparing the conduct of the counsel at bar with counsel in other circuits who were found to have given ineffective assistance, the 5th Circuit implicitly suggested that such conduct would be the standard in its jurisdiction as well).

In *Gaines*, the prosecution alleged that the shooting by the defendant was completely unprovoked. 575 F.2d at 1149. However, although the defendant told his attorney that he had been assaulted and robbed by the victim, the shooting occurred in front of a crowd of people, and the indictment listed 13 potential witnesses, defense counsel never interviewed any of the listed witnesses or conducted an independent search for witnesses. *Id.* at 1148-49. The 5th Circuit affirmed the judgment of the Trial Judge that this was ineffective assistance of counsel, as an investigation of witnesses or an interview of those listed on the grand jury indictment would have allowed the defense attorney to assert either a self defense claim, or to mitigate the charge by showing provocation. *Id.* at 1149.

In *Bryant*, the defendant was charged and convicted of armed robbery. 28 F.3d at 1413. The defense attorney did not interview potential alibi witnesses or interview the eyewitness to the crime. *Id.* at 1416-1418. While the defendant did not directly make available the identity of his alibi witnesses, the Court found that between the defendant's testimony and police investigation notes, the defense attorney had enough information to try and contact the alibi witnesses for an interview on a potential alibi defense. *Id.* at 1416-1417.

Regarding the eyewitness testimony, the Court found that vigorous cross-examination of the eyewitnesses was not enough to excuse not interviewing them altogether. *Id.* at 1418. Based on these omissions, the 5th Circuit found counsel to be ineffective. *Id.*

When intent is the issue and the criminal intent is not recorded on tape, then the credibility of between defense and prosecution witnesses is critical. As a result, the failure to subpoena witnesses who have testimony regarding intent is presumptively prejudicial. *King v. State*, 810 P.2d 119 (Wyo. 1991). As described below, this case is precisely on point with Mirza's case.

**Specific Acts and Omissions of Adler**

1. **Adler Failed to consult with Adnan Mirza regarding the allegations charged, the facts supporting those allegations, any defenses and the facts supporting those defenses.**

The most basic of requirements, talk to the client about the facts of the case. Adler never talked to Mirza about the facts of the case. (Affidavit of Mirza, DE 304-8 at pp. 6-7). Adler never had time to discuss the facts. Adler did visit the detention centers. Adler's first visit with Mirza lasted 45 minutes and according to Adler was just an introduction period. Id. They did not talk about the case. When Adler would visit, he would see many clients on the same day. Each client would get approximately five to 20 minutes of his time. *Id* at p. 7. Pacer indicates that David Adler had handled 567 cases as of February 24, 2014. This spans a time period of about from 1992 until present. The early years have fewer cases than the later years. This docket only includes Adler's federal cases in the Southern District of Texas. It does not include any of his state cases anywhere in the state or any federal cases in other jurisdictions. Adler's caseload may be the reason for his hasty conduct, but the Court cannot permit this excuse. Attorneys should only accept a case if they have sufficient time to provide an effective defense.

Because Adler did not talk to Mirza, he did not know the true facts of the case. Without knowing the true facts of the case, Adler did not recognize favorable evidence in the discovery; Adler did not know the significance of witnesses listed by Mirza on the witness list that Mirza gave to Adler's assistant; and Adler could not make a determination whether it was reasonable to decline to investigate.

For example, the campers' intent to support Jamaat-e-Islamia Pakistan, a socio/political humanitarian organization, rather than the Taliban is recorded on the audio taped evidence. Because Adler never talked to Mirza, he did not know that Jamaat-e-Islamia Pakistan is a humanitarian organization whose members formed ICNA. Therefore, Adler never presented the true intent of the campers to the jury. The repetition of the intent imagined by the government agent without the presentation of the true intent from the defense overcame the jury's will. Certainly, if Adler had presented the true intent of the campers to the jury and showed the jury the expressions of this intent on the audio tape, the jury likely would have voted not guilty.

**2. Counsel failed to investigate**

Because Adler did not investigate, he did not know the order of events, did not know that Mirza did not participate until after Coates was a paid confidential informant asserting the influence of the United States government on Mirza. Because Adler did not investigate he did not know that there was evidence available to him that Mirza did not intend to provide financial support to the Taliban, did not ever work in violation of his Visa, and was entrapped to participate in shooting games which led to the misperception that he supported violence.

Adler failed in two regards in the investigative phase. First, Adler failed to review all of the physical evidence and failed listen to all of the tapes in this case. An affidavit of Tariq Ahmed is attached to defense pleadings which gives some information that Adler would have learned if he had listened to the audio tapes.

Adler would also have found the evidence that Mirza did not go camping with James Coates until after James Coates was stopped by law enforcement leaving Big Bend Park and became a paid government confidential informant.[10]

There are many hundreds of hours of tapes in this case. From the trial proceedings, it is clear that Adler did not listen to all of the tapes. It is imperative to get the full picture of this situation to listen to all the tapes. The government has taken a few statements out of the full context of the relationship and created a perception that the shooting trips were intended for military purposes. The government then further enhanced the perception by inserting a government agent in the group to ensure certain words were used and to create an appearance that the boys intended to participate in military training. The campers intended to be boys playing with guns. The government inserted the person who offered to make their target shooting into war games. Mirza did not engage in any shooting until after Coates became a paid confidential informant.

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[10] James Coates was stopped by law enforcement leaving Big Bend in July 2004. Coates agreed to be a confidential informant in September/October 2004. (Affidavit of Mirza, DE 304-8 at p. 5) Mirza secured his hunting license in December 2004 and did not go shooting until after he had the license. (DE 257 p.5 and DE 304-8 at p. 8) Even the government witness confirmed that there was no evidence that Mirza wanted to go shooting before Coates suggested it. (DE 257 at p. 212).

Turning to the evidence that Adler did not review the tapes, during the cross-examination of the government agent, Adler attempted to offer Adnan's hunting license into evidence in order to show Adnan's true intent. The Court had only heard the tapes offered by the government which are ones that include the isolated comments that cause the perception of military training. The Court had not heard any tapes with exculpatory information, nor had the Court heard from any of the boys who participated in the games. In order to decide if he would permit the admission of the hunting license, the Court asked the attorneys: "In any of these tapes, is there any discussion about hunting?" Adler responds, "No." (DE 258 at p. 164) The Court denies Adler's request stating, "If there had been any other kind of evidence to suggest anything about legitimate hunting in this country, it might be different." (DE 258 at p. 165).

In reality in the tapes, there is significant evidence addressing hunting. Detailed Conversations about hunting including what animals to hunt where occur on August 23, 2005, and September 20, 2005. See exhibit A attached to this brief which is a transcript of those conversations which were provided to the defense in discovery but were not presented to the jury by either side in trial. These are just a sampling of what undersigned counsel has been able to find in the incredible volume of tapes so far. Court is entitled to rely upon an expectation that defense counsel has reviewed all of the evidence and that any statements made by counsel are based upon a full review of the evidence, Courts cannot make fair rulings without such reliance. Adler's lack of knowledge about the evidence actually handed to him by the prosecution caused the critical evidence regarding Adnan's intent to be kept from the jury. This evidence should have included the hunting license and the tape discussing hunting.

Here is an example of how the government took portions of conversations and demonized legal conduct. The first taped government presents to the jury is exhibit 13(a) which is a recording that took place on August 16, 2005. (DE 258 at p. 9) The sole purpose of this tape is to attempt to show the boys had a criminally guilty mind. The prosecutor asks the question, "In the last line of the conversation, Mr. Mirza says, 'We don't want these -- like the ISGH people to know that's what we are doing with their property.'" *Id* at 13. This statement by no means indicates a belief that they are doing anything criminal, just that the conservative elders are unlikely to support the Texas way if life of shooting guns for fun. Contrary to the prosecutor's comment that this is not the last statement in the conversation. Even the government's exhibit includes more of the conversation in which the other boys tell Adnan that everyone is using the camp for shooting.

Second, on the failure to investigate, Adler failed to interview critical witnesses whose names were given to him by Adnan and who were readily available to testify. Attached to Mirza's writ are affidavits from Ibrahim Badat, Hany Massou, Shiraz Qazi, Abdure Rehman Badat, Fatimah Bhutan, Hanif Ismail, and Adnan. A letter from Mirza's brother, Bader Mirza, is also attached. Bader would have testified if Adler had assisted him in securing a visa for that purpose. The affidavit of Hanif Badat is also attached. All of these people possessed critical facts and would have been available to testify.

Adler claims a witness who readily spoke to undersigned counsel would not speak to him. Presuming Adler's statement is true even though it is directly contradicted by sworn affidavits, Adler took no action to find other ways to get this critical evidence. He could have subpoenaed business records from Stop-n-save including employee records, records of "gas complications" to see if they even existed and if so if they were authored by Adnan. He could have subpoenaed Texas Workforce Commission records which would show any employment by Adnan. He could have subpoenaed the Badats as well as their employees to testify. As Adler noted in his cross if Gilbeau, the jury is not going to know if the sponsor said, "yes. I told him to work," or "No. I just let him play with the computer at the office, make copies for his community organization." (DE 259 at p. 68). Even Adler recognized the importance of this information.

3. **Failure to present favorable evidence that would have resulted from effective investigation**.

The jury determined that Mirza intended to support Taliban troops on the battlefield, because all the jury had was the government agents' testimony. As pointed out by the government and 5th Circuit on appeal, the government testimony was all that the jury had to rely upon in making its decision. The Jury also found that Mirza was employed again because all they had to rely upon is testimony from government agents plus checks that Mirza cashed. The defense did not offer any explanation. The defense did not subpoena the employee records for the firm, the state records for employment for the firm, or just employees of the firm to testify that Mirza was not employee. Adler claims Ibrahim would not speak to him. Ibrahim denies that Adler even attempted to speak to him, but regardless Adler had other evidence available to him as an alternative.

The Jury never saw Mirza's true character. Every shred of evidence about Adnan and his life indicates that he lacked any propensity whatsoever to engage in any violence at all particularly violence against the United States or to support any organization that would engage in any such violence. Adnan's father worked for Bechtel Oil Company when he was young and then worked for the Kuwaiti government in the equivalent of our homeland security department. Adnan was a victim of the Iraqi invasion of Kuwait and a beneficiary of the United States action in removing the Iraqi's from his country. Adnan and his family were forced to leave their country and virtually everything they owned after the invasion. Adnan's father and his family were in particular danger as the Iraqi's targeted government employees. Adnan and his family were able to return only after the United States removed the Iraqis. Then, as a young adult, every second of Adnan's life up until the point when his friend James Coates becomes employed by the government is completely focused on peaceful humanitarian projects.

Attached to the writ are affidavits as described above. Each of these witnesses advises that they were not contacted by Adler. Each of these witnesses advises that if they had been contacted by Adler, they would have testified in the trial and each witness provides the substance of their potential testimony. The testimony of these witnesses would have proven that Mirza was committed to peace and focused his life on easing the suffering of others.

The testimony of these witnesses would have proven that Mirza was not employed and therefore did not violate his student visa and therefore could lawfully possess a gun. The testimony of these witnesses would have proven that Mirza never intended to provide financial support to the Taliban. The testimony of these witnesses would have proven that any appearance of impropriety on the part of Mirza was created by the efforts of the paid confidential informant and the paid contract government agent to entrap Mirza.

For example, Agent McKinley testified that the government did not recruit James Coates. (DE #257 at p. 161). Coates' wife describes the day the agents came to her house and met with her and her husband to recruit Coates to be an informant. (DE # 304-5 at p. 2) Coates was paid handsomely for his service, but the jury was not informed how much he was paid. Coates was paid for information. (DE 257 at p.202- 203) The amount of pay varies depending upon amount of time, a particular event, leg work, or whatever else. *Id.* An informant does logically get paid more if gives more information. *Id.* The agents never state how much Coates was paid. Payment to a confidential informant obviously can induce testimony, the greater the payment, the greater inducement to testify in line with the government's theory. The government knows this, so they managed to ensure that their witnesses could not answer the pay questions. However, one defense witness is available to answer the questions. On one occasion, Coates' wife saw Coates bank account open on his computer. Coates had been acting very strange, so as a smart wife, she had decided to check the computer when Coates got up without logging off. She was shocked to see about weekly deposits in the amounts of $10,000 and $15,000 each for many weeks. (Affidavit of Fatimah Bhutan, DE 304-5 at p. 2)

And where was Coates? Why wasn't his testimony presented to the jury? Certainly, if his testimony had been in line with the government's theory, the government would have subpoenaed him to testify. At the time of trial, Coates was in Houston, and could have been subpoenaed by the defense to testify. It is very curious that the prosecution did not subpoena him to testify. Adler should have checked the government's subpoena list. Adler would have learned that the government did not intend to subpoena Coates, and he could have issued a defense subpoena. Coates has now intentionally disappeared. Counsel continues her search for Coates and believes that someday he will appear and tell his story which likely is different that the story presented by the government. In the meantime, the affidavits attached to the writ are sufficient to show that favorable evidence was available for presentation to the jury. If this favorable evidence was presented, more than likely the jury would have found Mirza not guilty.

Defense counsel put on a few witnesses who did not know Adnan well enough to render significant opinions. They were only able to testify about Adnan's service to the community by feeding the homeless. This service is commendable but feeding the homeless in and of itself is not a defense to a crime. It is a defense that Adnan is a peaceful person. As evidenced by the cross-examination of the defense witnesses, these witnesses did not know Adnan will enough to render an opinion on his character for peacefulness. Adler first called Sam Kouka. (DE 259 at p. 91) Sam testified that he is not very close friends with Adnan and did not socialize with Adnan. *Id* at 92. Kouka owns and manages a slaughter house. Kouka was referred to Adnan by ISGH in order to find needy families to who to distribute food. *Id* at 93. Kouka started donated animals through Adnan six, seven or eight years before the testimony. *Id*. Interestingly, Kouka states it is not just a job, referring to volunteer work as a job and clearly reflecting that it is not unusual to say one is at a job or working when one is performing charity work. This witness did not even know his statement was relevant in other aspects of the case. And this testimony shows that leaders in the charity groups which includes the Badats did assign Adnan charity "work". Kouka barely knew Adnan. He did testify that he believed Adnan's reputation was as law abiding citizen, but he did not have the background to state this opinion. *Id* at 95. Had the government lodged an objection for lack of predicate or foundation, the objection likely would have been sustained.

Witness Malik Mohammad was permitted to testify under an assumed name with only a sketchy explanation of his employment. He was a critical witness because he is the only person that testifies that the funds were intended to go to the Taliban. Even the tapes are insufficient to prove this. He also is one of the witnesses who the government offers to prove their allegation that Adnan is working.

Adler asks the case agent if students who come to the U.S. are required to have a financial sponsor, but the agent did not know. (DE 257 at p. 226). Adler needed his own witness for this purpose in order to show that the checks deposited in Adnan's account were part of his financial support. Ibrahim Badat would have been the best witness on this issue, but documents and other witnesses were certainly a reasonable alternative available to Adler.

4. Failure to effectively respond to the Government's motion in Limini to prevent the defense from mentioning that Adnan Mirza had a hunting license.

The government moves in Limini to exclude any mention of Adnan's hunting license because the government alleges there is no evidence of entrapment and because the government alleges that Adnan is "an illegal alien" who was not entitled to a hunting license. (DE 199 at p. 2). First, in response to this motion, Adler does not explain to the Judge that Mirza was lawfully present on a student visa and therefore entitled to possess a weapon. Adler does not explain that the prosecutor intends to present evidence that Mirza was working for pay which would violate his student visa, and Adler does not explain to the Judge that only if the jury determines that Mirza violated his student visa by working for pay will Mirza be considered an illegal alien. Therefore, the mere allegation by the government that Mirza was not legally present could not be the foundation for a ruling to exclude the hunting license. If Adler had properly informed the Judge of these facts, the Judge likely would have ruled that the hunting license was admissible.

Second, because Adler did not know the facts of the case, because he had not talked to his client about the facts or to any substantive fact witness or reviewed all of the evidence, Adler erroneously answers the question the Court believed was critical to its ruling.

The Court: When did that happen?

Adler: The hunting license was approximately December of '04, Your Honor.

The Court: So, that was before any of the events alleged in these conspiracies?

Adler: Correct, Your Honor. (DE # 257 at p. 4)

The truth is that some of the young men were already engaged in the camping trips before Mirza secured his hunting license and the case had been initiated before Mirza secured his hunting license. Coates and Williams were stopped by border patrol while camping with guns on Big Bend in July 2004. Coates became a confidential informant in September/October 2004. Mirza only agreed to shoot guns after he was pressured to do so by the paid confidential informant Coates. The dates of Coates assignment as a confidential information and Mirza's hunting license support the entrapment claim and therefore supported admission of the hunting license. Adler did not know the correct timeline; therefore, he misinformed the Court and then subsequently misinformed the jury in argument.

The jury should have had the hunting license in front of them as evidence of Adnan's intent and as evidence of the intent of the camping trips prior to the involvement of the government agent Mohamed. The jury would have had the hunting license in front of them had Adler correctly advised the Court of Mirza's immigration status and correctly advised the Court of the timeline of events.

6. Failure to adequately prepare the defense witnesses by making them aware of the allegations charged in the indictment, the photographs of Adnan firing weapons and the discussions at the camp site.

Adler intentionally failed to prepare the defense witnesses for their testimony. In his affidavit, Adler states that he was afraid the witnesses would not testify if he showed them pictures of Mirza firing weapons. (Sealed Affidavit of Adler, at p. 9). One of the first things a lawyer is trained to do in preparing a witness is to inform the witness of the nature of the charges and the evidence against their client. Being so informed prevents the government from catching the witness off guard. And if a witness does not feel that he/she can render a favorable opinion for the defendant after being informed of the charges by the defense attorney, the witness should not be called to testify by the defense. In this case in particular, if the witnesses do not believe in the 2nd Amendment, they will clearly not be helpful witnesses. What happens in cross of these witnesses is precisely why all witnesses should be prepared. Instead of being favorable witnesses to the defense, the witnesses become highly detrimental to the defense. The appearance Adler's conduct created to the jury is that no one in the Islamic community or otherwise supported Mirza. As evidenced by the affidavits attached to Mirza's writ, this is not true. Many people in the community supported Mirza, and many people knew that members of ISGH were using the ISGH property for shooting weapons.

*Taylor v. Oklahoma*, 972 F.2d 864 (Ct. of Crim. App. Oklahoma 1998) is one example of a case where the Court including failure to adequately prepare witnesses as a reason for remanding the case for an evidentiary hearing.

7. Failure to present evidence to jury from audio tapes that was requested by Adnan Mirza to be presented which would have supported the defense that he was entrapped by James Coates to participate in the crimes alleged.

Adler admits that Mirza gave him notes with written comments to the audio recordings and transcripts. (Sealed Affidavit of Adler, at p. 5) Adler claims these notes were written with such small letters that they were illegible and were difficult or impossible to read. Id. Adler claims he asked Mirza to make those notes more legible. He claims Mirza laughed or smiled. Id. Mirza is one of those people who deals with stress by smiling and laughing. In this particular situation, Adler's statement that he could not read Mirza's notes was ridiculous and just further evidence that Adler did not care to effectively defend Mirza. Mirza was exasperated by this time in the process.

Adler provided undersigned counsel with a copy of everything in his file, and mysteriously the notes with the witness list and the notes regarding the audio tapes are missing. Mirza's handwriting is not eligible. A copy of a letter from Mirza to undersigned counsel is attached to this brief as Exhibit F in order to provide the Court with a sample of Mirza's handwriting when evaluating Adler's claim that he could not read Mirza's notes. The notes would certainly be better evidence, and again it is rather curious that the defense evidence is destroyed, but Adler was able to produce for counsel boxes of government evidence.

Mirza renews his requests that he be writted back to Texas and that his attorney be appointed so that all of the evidence he originally reviewed can be reviewed again.

**Admissions in Adler's Affidavit**

Adler's affidavit makes several admissions that confirm his ineffective assistance of counsel.

1. In paragraph 6 of his affidavit, Adler states, "I spent more than 25 hours discussing the facts and the law of the case with Mr. Mirza." Mirza denies that Adler actually spent 25 hours meeting with him. The initial visit was 45 minutes. The remaining visits were 5 to 20

minutes and consisted of Adler telling Mirza he should plead guilty. Given that the tapes themselves span hundreds of hours, 25 hours of discussions could not even cover the taped evidence, much less address the remaining evidence, address potential defense issues and the legal issues related to the facts.

2. Mirza did not give names. First, it is the defense attorney obligation to investigate. Certainly, starting with names in the government discovery is important. In this case, the governemtn said that he was employed by a Badat, easy to see that need to seek out the Badats, and if they are not able to testify, then subpoena their accountant or other records or other employees to prove the lack of employment. Second, Mirza states that he did give names. Circumstancial evidence supporting this: Adler had the names of the witnesses who he called. These witnesses were contacted by Adler's investigator.

3. Adler admits in paragraph 16 that he did not investigate the background of the confidential informant who initiated the investigation, claiming that there was no reason to investigate the credibility of Coates because the government advised Adler that they would not be calling Coates to testify. This is an incredible red flag. As soon as Adler was advised that Coates was not testifying for the government, Adler should have sent an investigator to interview Coates. It is very possible that he would have testified favorably to the defense.

4. Adler claims in paragraph 17 that he did investigate the background of Malik Mohammed; however, Adler did not provide notes or reports from this investigation.

5. In paragraph 15, Adler admits he was unable to find the Eggman to testify. The Eggman is a celebrity in the city of Houston and readily findable on the streets of Houston passing out eggs to the homeless. As an officer of the Court, undersigned counsel affirms

that the Eggman has advised he will help Mirza in any way possible. This is just evidence of how little effort that Adler put into an investigation in this case.

6. In paragraph 20 of his affidavit, Adler makes a comment that is essentially an admission that he did not listen to the audio tapes. Adler states with much drama that there is a comment on tape that Mirza claims he is a super sniper. Mirza was not a particularly good shot. He missed targets frequently. When he made this statement, it was clearly a joke. He is laughing and teasing. Adler turns humor into criminal behavior, and he is supposed to be the defense attorney showing the jury the truth of the government's ridiculous claims.

7. In paragraph 8, Adler states that he told Mirza that if he testified that he was not employed that the government was likely to seek a sentencing enhancement because it would be false testimony. This admission shows that Adler chose not to believe his client based upon the government's claims alone without ever performing an independent investigation into the facts. Without talking to a single person employed at the company where Mirza allegedly worked, and without issuing subpoenas for any records from the company, Adler had decided his client was guilty. This admission that he did not believe his client is the foundation for Adler's failure to perform his duties as trial counsel.

**Mr. Adler's Conduct was not Objectively Reasonable**

The controlling cases show that Adnan Mirza was not given effective assistance of counsel. In the very least, Mr. Adler should have conducted an independent investigation that would have led to the discovery of essential facts that would have brought about a sufficient defense which would have strongly affected the outcome of the trial.

First, an investigation yielding witnesses other than those he worked with when volunteering, would have led to the interviewing of Ibrahim Badat, Hanif Badat, Ayub Badat, and Hanif Ismail, which would have brought to light that he received money out of concern for his financial well-being, and not in exchange for work. This would have created a fact issue, in which the jury could very well have believed that he was not employed. This would have been a defense to the claim of a violation of his student visa.

Second, an investigation of the money donated from Mr. Mirza, would have shown that it never actually ended up in the hands of the Taliban. While Mr. Adler asserts that this is immaterial and it only matters if this was Mr. Mirza's intent, Mr. Adler cannot avail himself with this argument, as an investigation of character witnesses such as Hany Massoud would have allowed into evidence testimony showing Mr. Mirza's lack of propensity to fund a terrorist organization.

Lastly, the fact that Mr. Adler did not listen to the full audio recordings used by the prosecution, which would have given the jury context and tone, eliminated what would have been a legitimate entrapment defense. In the very least, Mr. Adler had a duty to listen to these tapes in their totality and provide an adequate defense based on them. He failed to do this, and therefore, failed to provide effective assistance of counsel.

All the aforementioned claims are further strengthened by the fact that Mr. Mirza gave a list of witnesses and recordings to Mr. Adler, which he did not investigate whatsoever. In the very minimum, Mr. Adler had a duty to independently investigate these witnesses and this evidence, but he provided even less than that by ignoring such evidence when Mr. Mirza attempted to provide it to him directly.

**Mr. Adler's Conduct was Prejudicial**

In comparison with *Gaines*, Mr. Mirza's case was clearly prejudiced by the objectively unreasonable conduct of Mr. Adler. The trial judge in *Gaines* only inquired as to if the jury *might* have believed a self-defense theory, had the proper steps been taken by defense counsel. This is in line with the Supreme Court's aforementioned "reasonable probability" standard, which is less than a preponderance of the evidence threshold. Had all the evidence excluded by defense counsel's ineffective assistance been offered, it is perfectly reasonable to say the jury might have believed Mr. Mirza: 1) was not employed 2) did not actually fund the Taliban, 3) did not have the propensity to actually fund or support the Taliban and 4) that Mr. Mirza was in fact entrapped. Therefore, the conduct of Mr. Adler was prejudicial to Mr. Mirza's case and meets the 2$^{nd}$ prong of the Strickland test.

"I think we're going to get a fairly quick verdict," David Adler (DE 258 at p. 195). Adler was correct, rushing through a case without a defense investigation and rushing through a trial without presenting the defendant's evidence result in a quick verdict. It is a travesty of justice that Adnan was convicted and incarcerated as result of a misinterpretation of his involvement created by the government and not corrected by defense counsel. This case shows how important it is not to presume conclusions from what you see.

Therefore, Adnan Mirza asks the Court to vacate and set aside the conviction and sentence in this cause as well as any other relief to which movant may be entitled.

Respectfully submitted,

Adnan Mirza

/s/ Daphne Pattison Silverman

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**CERTIFICATE OF SERVICE**

I, Daphne Pattison Silverman, do hereby certify that on this the 3rd day of March 2014, a true and correct copy of this Pleading was served on all parties of record via electronic filing.

/s/ Daphne Pattison Silverman

Daphne Pattison Silverman

Attorney for Movant, Adnan Mirza